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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,274	08/01/2001	Richard S. Cerami	020366-077210US	5356
20350	7590	03/10/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			TODD, GREGORY G	
			ART UNIT	PAPER NUMBER
			2157	

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	09/921,274	CERAMI ET AL.	
	Examiner	Art Unit	
	Gregory G Todd	2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 November 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-16 and 21-36 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/12/04, 01/24/05.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Response to Amendment

1. This is a second office action in response to applicant's amendment filed, 08 November 2004, of application filed, with the above serial number, on 01 August 2001 in which claims 1 and 3 have been amended and claims 17-36 have been added. Claims 1-36 are therefore pending in the application.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: In claim 14, "data only slots" are not defined in the specification, however, there are data and video-only ports.

Election/Restrictions

3. Newly submitted claims 17-20 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The claims are directed towards allowing and denying customer service requests based on spare capacity whereas claims 1-16 and 21-36 are directed towards determination of spare network capacity.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 17-20 are withdrawn from consideration

as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2, 12-13, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Rohner (hereinafter “Rohner”, 5,680,325).

Rohner teaches the invention as claimed including spare network capacity planning and calculation (see abstract).

As per Claim 1, Rohner teaches a method for determining spare capacity for a video and data network from a network element database comprising:

receiving a request for spare capacity in the video and data network for a customer requesting a service for the video and data network, wherein the request comprises a service area identifier corresponding to the customer (at least col. 5, lines 15-22, 50-67; col. 7, lines 25-57; col. 6, lines 23-36; col. 10, lines 7-16; local area being monitored, identifying certain areas with customers);

identifying equipment to check for spare capacity from the service area identifier, wherein the equipment identified is used to provide the service to the customer on the video and data network (monitoring network architecture and hardware and having

service activation from new or existing equipment) (at least col. 7, lines 32-57; col. 9, lines 56-65; col. 10, lines 7-26);

determining if the identified equipment has spare data and video capacity using information for the identified equipment in the network element inventory (available capacity using assignable inventory) (at least col. 7, lines 32-57; col. 9 line 41 - col. 10 line 39), and

if the equipment has spare data and video capacity, calculating spare video and data capacity for the equipment, wherein the spare video and data capacity is used to provide the service to the customer, if desired (usage data compared with capacity with customer service contract upon request) (at least col. 7, lines 32-57; col. 9 line 30 - col. 10 line 20).

As per Claim 2, Rohner teaches the method of claim 1, wherein the video and data network comprises a Digital Subscriber Line (xDSL) network (at least col. 4, lines 50-59).

As per Claim 12, Rohner teaches the method of claim 1, wherein checking the network element database to determine if the identified equipment has spare data and video capacity comprises checking if the identified equipment has spare virtual video/data capacity (logical inventory reallocation) (at least col. 9, lines 7-55).

As per Claim 13, Rohner teaches the method of claim 1, wherein checking the network element database to determine if the identified equipment has spare data and video capacity comprises checking if the identified equipment has spare physical video/data capacity (at least col. 7 line 36 - col. 8 line 58).

As per Claim 16, Rohner teaches the method of claim 1, further comprising checking the network element database to determine if the identified equipment telephony usage is at a maximum (at least col. 3, lines 1-45).

Claims 21-22, 32-33 and 36 do not add or define any additional limitations over claims 1-2, 12-13, and 16 and therefore are rejected for similar reasons.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rohner in view of Wetzel (hereinafter "Wetzel", 6,388,990).

Rohner fails to explicitly disclose wherein the video and data network comprises a Very high data rate Digital Subscriber Line (VDSL) network. Rohner does disclose using next generation networks and ADSL networks (at least col. 4, lines 50-59). However, using certain xDSL technologies such as VDSL is disclosed by Wetzel (at least col. 2, lines 18-34). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of VDSL into Rohner's system as Rohner discloses using a next generation network, suggesting higher bandwidth networks, as the medium for communications and as Wetzel discloses VDSL as being a variation of xDSL for future networks.

Claim 23 does not add or define any additional limitations over claim 3 and therefore is rejected for similar reasons.

8. Claims 4-11 and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rohner in view of Datta et al (hereinafter "Datta", 6,209,033). As per Claim 4, Rohner teaches the method of claim 1, wherein calculating spare video/data capacity for the equipment comprises calculating hardware available minus hardware in use. Rohner fails to explicitly teach the calculating of spare capacity to include video and data *ports*. However, the use and advantages for using such ports is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Datta. Datta discloses many calculations, including average bandwidth usage (at least col. 9, lines 1-25; col. 12, lines 40-56). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of Datta's ports into Rohner's system as Rohner clearly is calculating usage compared with capacity and the hardware associated with the difference (at least Rohner col. 7, lines 25-57; col. 8, lines 20-25) needed for optimal differences.

As per Claim 5, Rohner teaches the method of claim 4, further comprising determining possible capacity for the equipment (at least Rohner col. 7, lines 25-5).

As per Claim 6, Rohner fails to disclose the method of claim 5, wherein possible capacity comprises possible video/data ports. However, the use and advantages for using such ports is well known to one skilled in the art at the time the invention was

made as evidenced by the teachings of Datta. Datta discloses many calculations, including average bandwidth usage (at least col. 9, lines 1-25; col. 12, lines 40-56). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of Datta's ports into Rohner's system as Rohner clearly is calculating usage compared with capacity and the hardware associated with the difference (at least Rohner col. 7, lines 25-57; col. 8, lines 20-25) needed for optimal differences.

As per Claim 7, Rohner teaches the method of claim 6, wherein calculating spare video/data capacity for the equipment comprises adding the possible hardware to the spare hardware capacity calculation (whether hardware installation is required) (at least Rohner col. 7, lines 25-57; col. 8, lines 6-25).

As per Claim 8, Rohner teaches the method of claim 4, further comprising determining a number of defective hardware (at least col. 7 line 58 - col. 8 line 5).

As per Claim 9, Rohner teaches the method of claim 8, wherein calculating spare video and data capacity for the equipment comprises subtracting the number of defective hardware from the spare video/data capacity calculation (hardware needed to reconcile request for capacity) (at least Rohner col. 7 line 58 - col. 8 line 25).

As per Claim 10, Rohner teaches the method of claim 4, further comprising determining a number of held and pending video service orders for the service area identifier (pending equipment orders) (at least Rohner col. 8, lines 59-67).

As per Claim 11, Rohner teaches the method of claim 10, wherein calculating spare video and data capacity for the equipment comprises subtracting the number of held

and pending video service orders from the spare video/data capacity calculation (construction management and tracking of pending and available equipment) (at least Rohner col. 8 line 49 - col. 9 line 6).

As per Claim 14, Rohner fails to teach the method of claim 4, further comprising determining a number of data only slots. However, the use and advantages for using data only is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Datta. Datta's system is data only and does not use video services (see abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of Datta's data-only network into Rohner's system as this would allow prioritized data traffic to be higher in priority than Rohner's video and data network, thus in circumstances with low capacity, low priority video could be cut-off from utilizing available bandwidth, thus increasing capacity.

As per Claim 15, Datta teaches the method of claim 14, wherein calculating spare video and data capacity for the equipment comprises returning the number of data only slots in the spare capacity calculation (at least Datta Fig. 6, 7).

Claims 24-31 and 34-35 do not add or define any additional limitations over claims 4-11 and 14-15 and therefore are rejected for similar reasons.

Response to Arguments

9. Applicant's arguments filed 08 November 2004 have been fully considered but they are not persuasive. Applicants argue, substantially, that Rohner is not directed

towards servicing customer requests for service or determining equipment that may be used to provide the service.

In response, Rohner clearly is directed toward customer service requests as Rohner teaches the steps of acquiring a customer via a contract or a customer service request and creating a customer account profile (at least col. 9 line 30 - col. 10 line 39). Rohner goes on to say the incorporated commonly assigned patent of Daley 5,650,994, app # 08/441,590, gives a more detailed description for activating and creating service for users. Regardless, Rohner further teaches assignable inventory being generated by existing or new equipment for the customer on an as-needed basis to allow for customer service activation, such equipment being determined according to the customer and associated certain geographic area.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Newly cited Fichou et al and Daley in addition to previously cited Bowman-Amuah, Cowan et al, Klassen et al, and Liu et al are cited for disclosing pertinent information related to the claimed invention. Applicants are requested to consider the prior art reference for relevant teachings when responding to this office action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory G Todd whose telephone number is (571)272-4011. The examiner can normally be reached on Monday - Friday 9:00am-6:00pm w/ first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571)272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregory Todd

Patent Examiner
Technology Center 2100



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PRIMARY EXAMINER